



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 12, 1997

Mark Brown, Treasurer
Mark Sharpe for Congress
P.O. Box 26384
Tampa, FL 33623

RE: MUR 4434
Mark Sharpe for Congress and Mark
Brown, as treasurer

Dear Mr. Brown:

On August 13, 1996, the Federal Election Commission notified Mark Sharpe for Congress ("the Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on September 9, 1997, found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) with respect to the reporting of contributions from Mel Danker, Louis J. Chiavacci, Gene Knippers, Christopher L. Bliss, Ronald Patak and Jodi Collins. The Commission further found reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441b(a). The Commission found no reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441f with respect to the acceptance and reporting of the contribution from Kimberlee Brown. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Designation of Counsel Form
Factual and Legal Analysis

cc: Mark Sharpe

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mark Sharpe for Congress and
 Mark Brown, as treasurer

MUR: 4434

I GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Nick Baldick of the Florida Democratic Party. See 2 U.S.C. § 437g(a)(1). The complaint was based on a newspaper report appearing in the June 30, 1996 issue of the *Tampa Tribune*.

II FACTUAL AND LEGAL ANALYSIS

A. The Complaint

The complaint suggests that several violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), occurred involving Outback Steakhouse of Florida, Inc. ("Outback") and Mark Sharpe for Congress, the principal campaign committee of Mark Sharpe in the 1994 race for the House seat from Florida's 11th Congressional district ("the Sharpe campaign").

The complaint first alleges that Joseph Kadow, an officer of Outback, acted as a conduit or intermediary who exercised "direction or control" over contributions to Mark Sharpe for Congress. As a result, the complaint alleges, Mark Sharpe for Congress may have failed to file appropriate reports of conduit contributions.

The complaint further alleges that Mark Sharpe for Congress filed inaccurate information with regard to certain specified contributions. With regard to a contribution from one Kimberlee Brown, the complaint alleges that Mark Sharpe for Congress should have properly reported her

husband, Kevin Harron, an officer at a New England Outback franchise, as the contributor. The complaint suggests that, because the check bore Ms. Brown's signature rather than Mr. Harron's, Ms. Brown and Mr. Harron were involved in the making of a contribution in the name of another which was accepted and mis-reported by the Sharpe campaign.

With regard to a contribution from one Mel Danker, the complaint alleges that under "Employer" he was listed as "retired," while another congressional committee which received a contribution from him reported him as working for Outback. Additionally, the complaint cites to the *Tampa Tribune* article in suggesting that, in "numerous instances," Mark Sharpe for Congress improperly provided the address of Outback's Tampa headquarters rather than the proper mailing address for contributors. The complaint suggests that Mark Sharpe for Congress failed to employ "best efforts" in obtaining relevant information about contributors.

B. Response to the Complaint

In response to the complaint, the Sharpe campaign states that Kadow was expressly authorized by the campaign to engage in fundraising and, therefore, his activities "qualify as an exception to the earmarking regulations of the Act." Regarding the contribution reported as being from Kimberlee Brown, the Sharpe campaign states that it received the check with Kimberlee Brown's name at the top and her signature, and that on its face the check was a contribution from Kimberlee Brown. The Sharpe campaign also addresses the specific instances of filing incomplete or incorrect reports, as alleged in the complaint. First, the Sharpe campaign states that the employer information for Mel Danker, who was listed as retired, was supplied by

Mr. Danker. With regard to the use of the Outback corporate headquarters address as the mailing address for certain contributors, the Sharpe campaign states that this address was only used for four contributors, and that three of the four individuals work on the premises and so it was proper to use the corporate address as their mailing address.

C. Applicable Law

Pursuant to 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b) and (d), it is illegal for any corporation to make a contribution in connection with any election for Federal office. The term "contribution" means "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate [or] campaign committee . . . in connection with" an election to Federal office. 2 U.S.C. § 441b(b)(2).

Employees of a corporation may make "occasional, isolated or incidental use of the facilities of the corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased." 11 C.F.R. § 114.9(a)(1). "Occasional, isolated or incidental use" means, when used by employees during working hours, "an amount of activity . . . which does not prevent the employee from completing the normal amount of work which that person usually carries out during such work period." 11 C.F.R. § 104.9(a)(1)(i). A corporation may suggest to its restricted class that they contribute to a particular candidate, without that action being considered a corporate contribution or expenditure, but may not facilitate the making of the contribution or act as a conduit for the contribution. *See* 11 C.F.R. § 114.3(a)(1); *see also* Advisory Opinion 1987-29. When a corporation facilitates the making of a contribution by a

person to a political committee, that action is in itself a contribution by the corporation to that same political committee.

Pursuant to 2 U.S.C. § 441f, no person shall knowingly accept a contribution made by one person in the name of another person. Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee. 11 C.F.R. § 104.8(c).

Pursuant to 2 U.S.C. § 434(a)(1), the treasurer of each political committee shall file reports of receipts and disbursements in accordance with certain provisions. Such reports shall include, *inter alia*, the identification of "each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, . . . together with the date and amount of any such contribution." 2 U.S.C. § 434(b)(3)(A). Where an individual is concerned, the term "identification" means "the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer." 2 U.S.C. § 431(13)(A).

Where a treasurer does not have the requisite information, the reporting requirements will be deemed to have been met when the treasurer shows that "best efforts" have been used to obtain, maintain and submit the required information. 11 C.F.R. § 104.7(a). With regard to information concerning the "identification" of a contributor, a treasurer is required to make at least one effort after the receipt of the contribution to obtain the missing information. 11 C.F.R. § 104.7(b)(2). This effort must consist of either a written request sent to the contributor or an

oral request to the contributor documented in writing, and must be made no later than 30 days after receipt of the contribution. *Id.*

D. Analysis

1. Acceptance of Corporate Contributions

Based on the evidence in hand, Outback used its corporate executives to facilitate the making of contributions to Mark Sharpe for Congress. One of these executives, Joseph Kadow, Vice-President and General Counsel of Outback, who also supervises the Outback Political Action Committee ("Outback PAC"), served as one of Mark Sharpe's principal campaign advisors. Given Kadow's dual role, Mark Sharpe for Congress accepted prohibited contributions.

The facts of this matter are similar in certain respects to a particular fact pattern in MUR 3672 where the Commission found probable cause to believe that corporate facilitation had occurred. In that fact pattern, a corporate executive solicited, collected and forwarded campaign contributions from corporate personnel. Among the significant factors in this decision were: (1) the executive normally handled the political and charitable functions of the corporation; (2) the executive solicited exclusively inside the corporation; (3) the executive delegated certain tasks to his secretary; (4) the executive was doing fundraising that had been requested of the corporation's CEO; and (5) the fundraising was described to the executive's fellow personnel as a corporate endeavor.

The facts of MUR 3672 described above demonstrate an overall corporate involvement in the fundraising at issue. In the instant matter, the facts demonstrate this same sort of corporate involvement and purpose.

First, statements reported in the *Tampa Tribune* demonstrate Outback's corporate interest and involvement in the Sharpe campaign. Kadow appears to confirm Outback's interest in the race, and in supporting Sharpe in particular, stating: "We asked our friends for help. Nobody's denying that. . . . We thought this was a race Mark could win, and we thought [the incumbent] was someone who had not been a friend to our business or to business in general." Rick Fontaine, the treasurer of Mark Sharpe for Congress at the time in question, notes that Kadow, as Outback's corporate attorney, would travel to Outbacks across the country and then return with campaign checks. After Kadow would arrive at night at campaign headquarters with contribution checks, the two "would go outside and talk or go next door to the Marriott." Another campaign worker, a volunteer named Terry Spirio, also remembers Kadow "bringing in lot of checks," and "remembers Sharpe meeting often with Outback officials at their corporate office."

Moreover, Outback appears to have incurred fundraising costs on behalf of the Sharpe campaign through Kadow's position as one of the campaign advisors. The assertion that Kadow often traveled to Outbacks around the country and returned with campaign checks has not been contested. Thus, it appears that Kadow may have either used the Outback corporate jet for these trips, or had his air travel costs paid for by Outback. In addition, Outback incurred costs of \$450

due to activity by Kadow and his secretary on behalf of the campaign at the office. The Sharpe campaign never reimbursed Outback for these costs. Kadow's apparent use of transportation paid for by Outback, and Outback's absorption of fundraising costs incurred by Kadow and his secretary, strongly suggest that Kadow was acting on behalf of Outback in fundraising for the Sharpe campaign.

Finally, it is apparent that Outback executives other than Kadow were instrumental in obtaining contributions for the Sharpe campaign, and that those who contributed understood this effort to be on behalf of Outback. The *Tampa Tribune* article quotes a number of contributors with Outback connections who explained the reasons for their contributions. One individual, Dearing Hockman, the spouse of an owner of an Outback franchise in Birmingham, Alabama, is quoted as saying: "We're Outbackers. We did this in support of [Outback's current Chief Executive Officer] Chris Sullivan." An Outback franchise owner in Virginia and Maryland, B.J. Stone, said that Sullivan and Robert Basham, Outback's current Chief Operating Officer, "explained things to us. It's a very strong partnership. We trust one another. If I needed something from Chris and Bob, they're there for me. It's the heart and soul of the organization."

Given the statements by Dearing Hockman and B.J. Stone, it appears that Outback executives used their Outback connections in soliciting contributions. It further appears that Joseph Kadow conducted a much more extensive effort in seeking support for the Sharpe campaign on behalf of Outback. Indeed, although Joseph Kadow has suggested that many of the people he solicited were acquaintances, such "acquaintances" included Outback personnel and

other persons whom Kadow apparently met as a result of his employment with Outback. It is apparent that Joseph Kadow would not have solicited many of these persons had he not worked for Outback.

Based on the foregoing, along with Outback and other executives thereof, Joseph Kadow approved of and took part in conducting a concerted effort to engender financial support for the Sharpe campaign. His efforts as Vice-President and General Counsel of Outback went beyond allowable activity, such as partisan communications to a restricted class, to the collecting and delivering of contributions.

Because Joseph Kadow worked on behalf of the Sharpe campaign in fundraising and other activities, his actions in effecting corporate contributions by Outback to the Sharpe campaign constitute acceptance of those contributions by Mark Sharpe for Congress.

Therefore, there is reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 441b(a).

2. Reporting Violations

a. Kimberlee Brown and Kevin Harron

Here, the check in question contained the pre-printed names of Kimberlee Brown and Kevin Harron. Kimberlee Brown's signature was actually on the check. While both Kimberlee Brown and Kevin Harron may have intended for Kevin Harron to make the contribution, the fact

that Kimberlee Brown signed the check means that she is properly considered to be the contributor. The Sharpe campaign properly reported her as the contributor.

Therefore, there is no reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441f in accepting and reporting the contribution from Kimberlee Brown.

b. Mel Danker

First, with regard to the issue of failing to properly report the occupation of Mel Danker, the complaint suggests that the Sharpe campaign should have known the identity of Danker's employer. In response, the Sharpe campaign asserts that it reported the occupation information as given to them by Danker.

The Commission's regulations require a treasurer to report all information regarding contributor identification not provided by the contributor, but in the possession of the political committee. See 11 C.F.R. § 104.7(b)(3).

The *Tampa Tribune* article reports that Danker is a relative of Outback executive Robert Basham. It appears likely that Danker was solicited for his contribution by Joseph Kadow, who had dual roles as an Outback executive and a Sharpe campaign operative. It thus appears that Kadow would have known of Danker's true occupation. Given Kadow's statement in the *Tampa Tribune* article that he was a "significant advisor" to, and an "authorized fundraiser" for, the Sharpe campaign, any knowledge he had regarding the true occupation of Mel Danker is considered to be known by the Sharpe campaign. As such, it should have been reported.

Therefore, there is reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) with respect to the reporting of the contribution from Mel Danker.

c. Failure to Report Mailing Addresses

Second, the complaint in this matter suggests that, in "numerous instances," Mark Sharpe for Congress improperly provided the address of Outback's Tampa headquarters rather than the proper mailing address for contributors, and that Mark Sharpe for Congress failed to employ "best efforts" in obtaining the appropriate addresses. Rick Fontaine told the *Tampa Tribune* that often the checks brought to him by Kadow did not have an address. In those instances, Fontaine would ask Kadow for the addresses, and would be told to put "550 N. Reo Street," the address of Outback's Tampa headquarters.

The response from the Sharpe campaign asserts that only four contributions used the North Reo Street address, and that all four individuals involved worked at Outback headquarters. The Commission cannot find any evidence that one of the individuals mentioned by the Sharpe campaign, Lauren Caine, ever made a contribution. A review of the Sharpe campaign's reports actually reveals eight individuals for whom the Committee reported the mailing address as 550 North Reo Street. The chart below shows the date of the contributions, the individuals making the contributions, their employers, and the amounts of the contributions. The three individuals identified as working for Outback are executives of that corporation, and thus it is conceivable that the corporate address is a legitimate mailing address for them. However, three individuals are identified as having worked for companies other than Outback, one is identified

as a homemaker, and the last has no information regarding occupation, suggesting that the person does not work for Outback.

NAME	EMPLOYER	DATE	AMOUNT
Robert Basham	Outback	06/30/94	\$1,000
Tim Gannon	Outback	08/31/94	1,000
		09/27/94	1,000
Louis J. Chiavacci	Goldman Sachs	09/29/94	500
		10/17/94	500
Gene Knippers	Sun State Ventures	10/18/94	1,000
Christopher L. Bliss	Alex Brown & Sons	10/19/94	500
Chris Sullivan	Outback	10/29/84	1,000
Ronald Patak	No Information	10/31/94	1,000
Jodi Collins ¹	Homemaker	11/05/94	1,000
		total	\$8,500

The same regulation that applied to the contribution of Mel Danker applies here. Indeed here, it appears that the treasurer of Mark Sharpe for Congress had sufficient information by which he should have concluded that the addresses given for those persons not employed by Outback were incorrect. First, given the contacts between Outback and the Sharpe campaign, the treasurer should have known that the address in question was that of Outback's headquarters and that it was, therefore, inappropriate to use it for individuals not connected with Outback. Moreover, given the circumstances under which the Outback address was provided, the treasurer should have known that it was incorrect. Therefore, the treasurer of Mark Sharpe for Congress

¹ On November 5, 1994, the Sharpe campaign filed an FEC Form 6, 48-Hour Notice for a \$1,000 contribution made on that same date by Jodi Collins. On that same form, directly under the contribution from Ms. Collins, was a \$1,000 contribution from Jessica McGee. Subsequently, on its 1994 30-Day Post-General Report, the Sharpe campaign reported a \$1,000 contribution on November 5, 1994 from Jodi McGee, using the North Reo Street address. It appears that the person filling out the Sharpe campaign's report copied the information from the Form 6 and mistakenly wrote down "McGee" instead of "Collins", and that Jodi Collins and Jodi McGee are in fact the same person.

cannot be said to have made "best efforts" to determine the correct information for Louis J. Chiavacci, Gene Knippers, Christopher L. Bliss, Ronald Patak and Jodi Collins.²

Therefore, there is reason to believe that Mark Sharpe for Congress and Mark Brown, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

² With regard to the failure to report the occupation of Ronald Patak, Commission records indicate that the Sharpe campaign sent a follow-up letter to Mr. Patak requesting his employer information. However, the letter was sent to the Outback headquarters address, where the Sharpe campaign could not reasonably have expected to find Mr. Patak. Accordingly, the Sharpe campaign's violation of § 434(a)(1) with respect to Mr. Patak involves the reporting of both his mailing address and his occupation.